

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RICHARD DAVID RODRIGUEZ,

Plaintiff,

No. 1:18-cv-988-KRS

v.

NANCY A. BERRYHILL,
Deputy Commissioner for Operations
of Social Security Administration,

Defendant.

ORDER DISMISSING CASE FOR LACK OF JURISDICTION


THIS MATTER comes before the Court upon Defendant's Motion to Dismiss (Doc. 17), filed January 11, 2019. In her motion, Defendant asks the Court to Dismiss Plaintiff's complaint, arguing that Plaintiff's claim is still pending before the Social Security Appeals Council and thus the Court is without jurisdiction to entertain Plaintiff's cause of action. *See, e.g.*, 42 U.S.C. § 405(g) (permitting a civil action to commence *after* the Commissioner of Social Security has rendered a final decision on a claim for disability benefits); *Sims v. Apfel*, 530 U.S. 103, 106 (2000) (explaining that an individual may obtain judicial review of a disability decision after the Social Security Appeals Council either grants review of a claim and issues a decision or denies a request for review).

Plaintiff failed to respond to Defendant's motion and, on February 14, 2019, the Court entered an Order to Show Cause (Doc. 18), wherein it directed Plaintiff to show cause as to why his complaint should not be dismissed. To date, Plaintiff has not responded to the order and the deadline for so doing passed on February 21, 2019.

Having reviewed Defendant's motion and determined that the Commissioner has yet to issue a final decision regarding Plaintiff's claim for disability benefits, the Court FINDS and

CONCLUDES that the motion is well-taken and should be granted.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (Doc. 17) is hereby GRANTED and Plaintiff's Complaint (Doc. 1) is DISMISSED for lack of jurisdiction.

A handwritten signature in black ink, reading "Kevin Sweazea". The signature is written in a cursive, flowing style. The first name "Kevin" is written with a large, stylized 'K' and 'v'. The last name "Sweazea" is written with a large, stylized 'S' and 'z'.

KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE